IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

:: J U D G M E N T ::

S.B. CRIMINAL APPEAL NO.371/1988
(Raja Ram Vs. State of Rajasthan)

S.B. CRIMINAL APPEAL UNDER SECTION 374 Cr.P.C. AGAINST THE JUDGMENT DATED 1.9.88 PASSED BY THE LEARNED ADDITIONAL SESSIONS JUDGE NO.2, HANUMANGARH IN SESSIONS CASE NO.97/85.

DATE OF JUDGMENT : 22nd November, 2007

P R E S E N T

HON'BLE MR. JUSTICE DEO NARAYAN THANVI

Mr. Pawan Ojha for
Mr. S.G. Ojha for the appellant.
Mr. JPS Choudhary, Public Prosecutor.

BY THE COURT :

1. This appeal is directed against the judgment & order dated 1.9.88 passed by the learned Additional Sessions Judge No.2, Hanumangarh, whereby, he convicted accused appellant Raja Ram for offence under Section 307 IPC and sentenced him to four years' rigorous imprisonment and to pay a fine of Rs.500/-, in default of payment of fine to further undergo three months'

rigorous imprisonment. Accused appellant Raja Ram was also convicted for offence under Section 27 of the Indian Arms Act and was sentenced to two years' rigorous imprisonment and to pay a fine of Rs.200/-, in default of payment of fine to further undergo one month's rigorous imprisonment. Both the sentences were ordered to run concurrently. However, the learned Judge acquitted accused Praman.

2. Facts leading to this appeal are that on 14.3.85, injured Ram Kumar filed a report at police station Tibi that in the evening of the day, at about 6.30 pm, he and Hardev Singh were going to the temple of Peerji. On the way, accused appellant Raja Ram and his uncle Praman were standing on the chowk of their house. When they reached near the electric pool, just ahead of patwarkhana, accused appellant Raja Ram fired at his thigh. He also fired on Hardev Singh, which collided with his right thigh. Accused Praman told that they should not be saved and asked accused appellant Raja Ram to make more fires, thereupon, Raja Ram also made two fires, which went over his head, thereupon, Sheochand and Kartar Singh came and took them to the police station on tractor. Both were medically examined. Police registered the case and after usual investigation, filed challan against accused appellant Raja Ram for offences under Sections 307 IPC and 27 of the Indian Arms

Act, whereas, accused Praman was challaned for offences under Sections 307/34 IPC and Section 114 IPC. Charges were accordingly framed, to which accused pleaded not guilty. Prosecution examined six witnesses. Statements of accused were recorded under Section 313 Cr.P.C. They led no evidence in defence. After hearing the arguments, the learned trial Judge acquitted accused Praman but convicted accused appellant Raja Ram as indicated above.

3. Learned counsel for accused appellant Raja Ram has submitted that out of the two eye witnesses, only one Sheochand has been examined, who has said that injured was taken to the hospital in the tractor of Om Prakash. Raja Ram and Mukhtayar Singh also came on the spot and they all took them to the police station Tibi. According to him, neither Pratap Singh nor Om Prakash nor Raja Ram nor Mukhtayar Singh have been examined by the prosecution and Sheochand is having enmity because of the case registered against him for getting un-licensed riffle at the instance of Het Ram, who is the brother of Praman. According to the learned counsel there were only two injuries said to have been inflicted on the legs with gun shot fire. There was no motive to kill the injured to make out a case for offence under Section 307 IPC. The Investigating Officer Subhash Chandra has not said anything as to the recovery of

empty bullets, which were fired on the spot, site Plan is also not clear, therefore, accused should be acquitted.

4. On the contrary, learned Public Prosecutor has supported the judgment of the learned trial court.

5. Having re-appreciated the evidence on record, it appears that the learned trial Judge came to the conclusion that offence under Section 307 IPC is made out only on the basis of the fact there were four fires from the side of accused appellant Raja Ram but neither in the site plan Ex.P-4 nor in the site inspection note Ex.P-4A, it has been shown that there were any marks of blood or empty cartridges were found on the spot. In absence of this, it cannot be said that two more fires were made by accused appellant Raja Ram after inflicting injuries on the legs of Hardev Singh and Ram Kumar.

6. As per the injury reports Ex.P-1 and Ex.P-2, which have been proved by Dr. Devi Lal Bhakar PW-1, there were two injuries on the person of Hardev Singh, one on the right foot ankle and another on the right ankle caused by fire arm and there was one injury caused by fire arm on the left thigh of injured Ram Kumar. Fire arm injury on the legs cannot be termed as an act of attempt to commit culpable homicide in the

absence of any specific motive. These injuries are simple in nature caused by fire arm, which is a sharp weapon. The testimony of the injured, coupled with the medical evidence and also the testimony of the eye witness Sheochand PW-5, is sufficient for the purpose of convicting accused appellant Raja Ram for offence under Section 324 IPC instead of Section 307 IPC.

7. Consequently, this appeal is allowed in part. Accused appellant Raja Ram is convicted for offence under Section 324 IPC instead of Section 307 IPC and Section 27 of the Indian Arms Act and he is sentenced to the period already undergone, which is more then four months. However, the fine of Rs.500/- imposed for offence under Section 307 IPC is enhanced to Rs.5000/- and fine of Rs.200/- imposed for offence under Section 27 of the Indian Arms Act is enhanced to Rs.2000/-, which shall be deposited before the learned trial court within a period of 15 days and the same shall be given to the complainant.

(DEO NARAYAN THANVI), J.

ms rathore